STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

KENYA ALI HYATT,

Defendant-Appellee.

Case No. 13-032654-FC
CofA#: 325741
SCt#s: 153081

Karen R. Hanson (P53588)
Attorney for Plaintiff-Appellant
900 S. Saginaw Street
Flint, MI 48502
(810) 257-3232

Ronald D. Ambrose (P45504)
Attorney for Defendant-Appellee
16818 Farmington Road
Livonia, MI 48154-2974
(c) (248) 890-1361

DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF

PROOF OF SERVICE

TABLE OF CONTENTS

INDEX OF AUTHORITIES

page

CASES (cont.)

STATUTES AND OTHER AUTHORITIES

STATEMENT OF QUESTION PRESENTED

I. DID THE CONFLICT PANEL ERR BY APPLYING A HEIGHTENED LEVEL OF SCRUTINY WHEN REVIEWING A JUVENILE SENTENCE IMPOSED UNDER MCL 769.25 WHEN A JUVENILE OFFENDER IS CATEGORICALLY DIFFERENT THAN AN ADULT OFFENDER AND A LIFE WITHOUT PAROLE SENTENCE CAN ONLY BE IMPOSED UPON A "RARE JUVENILE OFFENDER WHOSE CRIME REFLECTS IRREPARABLE CORRUPTION"?

Defendant-Appellee says "no."

Plaintiff-Appellant says "yes."

The Court of Appeals says "no."

The trial court did not decide this issue.

STATEMENT OF FACTS

Defendant-Appellee Kenya Ali Hyatt, 17-years old at the time of the offense, was charged with Felony Murder; Conspiracy To Commit Armed Robbery; Armed Robbery; and Felony Firearm. ("Information Felony," 3/27/13.) Hyatt was charged with two others—Co-Defendants Aaron Williams and Floyd Perkins. Williams was 29-years old when the offense occurred, and Perkins was 19-years old at the time of the offense.

At least initially, Co-Defendant Perkins pled guilty, on the date set for trial, to Second-Degree Murder and Felony Firearm. (Transcript, "Plea," case number 13-32653-FC, p 4, 12/5/13.) The case involves the fatal shooting of John Andrew Mick on August 14, 2010. (Id., p 6.) As part of the plea, Perkins was to provide truthful testimony against the Co-Defendants. (Id.)

As part of the factual basis for the plea, Perkins admitted to being with Hyatt and Williams; that Mick was working security; that they knew Mick had a firearm; that they decided to get the firearm from Mick; that he and Hyatt approached Mick, with Hyatt being armed; that Williams was acting drunk so that Mick would get out of his vehicle; that Hyatt pulled the gun out; Mick grabbed the gun; and that Hyatt "let off a shot towards the chest area of Mr. Mick." (Id., pp 12-19.) Perkins acknowledged that Mick was shot four times, and that Perkins grabbed Mick's gun after the first shot and ran away. (Id., pp 19-20.)

Dr. Allecia Wilson testified at trial as an expert in forensic pathology. (Transcript, "Jury Trial," pp 133-35, 6/24/14.) She mentioned the cause of death was multiple gunshot wounds, and the manner of death was homicide. (Id., p 141.)

After a multi-day trial, the jury returned a verdict of guilty of First-Degree Murder; Conspiracy To Commit Armed Robbery; Armed Robbery; and Felony Firearm. (Transcript, "Trial Volume IX," pp 5-6, 6/30/14.)

Due to the juvenile age of Hyatt, the court held sentencing hearings pursuant to Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012). (Transcript, "Pretrial," p 3, 10/3/14.)

The court heard from Officer Terrance Green, Dr. Noelle Clark, Hyatt's father, and Hyatt. (Transcript, "Miller Hearing," 11/21/14.) Officer Green admitted that Hyatt said that the goal was to get a firearm from a security guard; that no one was supposed to get hurt; that the first shot was accidental; and that he blacked out thereafter. (Id., pp 10-11.) Green mentioned Hyatt said he did not think the gun was loaded. (Id., p 14.) The other persons involved, Aaron Williams and Floyd Perkins, were older than Hyatt, and that it was Perkins' idea to get the gun. (Id., pp 18-19.)

Dr. Noelle Clark testified as an expert in Psychology; that she performed a psychological evaluation upon Hyatt; that Hyatt had a below average IQ at the time; and that his testing scores revealed "a seriously disturbed young man

. . . . with serious maladjustment." (Id., pp 27-34.) It was reported that Hyatt's father was shot three times in the back, paralyzing him, and that Hyatt took responsibility for the attack. (Id., pp 39-40.) Dr. Clark reported that shortly after his father became paralyzed, Hyatt moved out of the house, bounced around among different relatives, and, as a juvenile, considered himself homeless. (Id., p 41.)

It was reported that Hyatt was high on crack cocaine when the murder occurred. (Id., p 42.) Dr. Clark described Hyatt's family as being dysfunctional. (Id., p 43.) She opined that **Hyatt has the capacity to be rehabilitated**. (Id., p 44.) Dr. Clark mentioned Hyatt was "impressionable" and "easily led." (Id., p 48.) She described Hyatt as being a "sensitive, compassionate young man," who was disconnected from social morals. (Id., p 51.)

Hyatt's father, Kenya Hyatt, Sr., testified that the younger Hyatt was born out of wedlock and had a learning disability. (Id., pp 59 and 70.)

Hyatt testified that he does not recall shooting Mr. Mick; that the firearm went off accidentally; that he does not recall how he came in possession of the gun; and that he was high on crack cocaine. (Id., pp 101-02.) **Hyatt stated he had asked for forgiveness**. (Id., p 103.) He mentioned he was 13-years old during the shooting of his father, and he had eight to ten guns pointed at him in the backroom when that incident occurred. (Id., p 111.) Hyatt stated had he

followed his father's instruction of not letting anyone in the house, his father may not have gotten shot—and that Hyatt often thinks about this. (Id., p 115.)

Hyatt's sentencing was held on December 29, 2014 before the Honorable Judith A. Fullerton of the Genesee County Circuit Court. (Transcript, "Sentence," 12/29/14.) Hyatt asked for forgiveness. (Transcript, "Sentence," pp 16-17, 12/29/14.) Despite the testimony from the expert, Hyatt's father, and Hyatt, the court determined to sentence Hyatt to life without parole on the First-Degree Murder conviction. (Id., pp 17-19.)

Hyatt requested the appointment of appellate counsel on January 14, 2015. ("Claim Of Appeal And Order Appointing Counsel," 1/27/15.) Appellate counsel was appointed on January 27, 2015. (Id.)

In a published opinion, the Court of Appeals affirmed the convictions but remanded for resentencing pursuant to People v. Skinner, 312 Mich. App. 15, 877 N.W.2d 482 (2015), appeal granted, 889 N.W.2d 487 (Mich. 2017). People v. Perkins, 314 Mich. App. 140, 885 N.W.2d 900 (2016), opinion vacated (Feb. 12, 2016), superseded in part sub nom. The Court indicated its reluctance in remanding for resentencing, stating "were it not for Skinner, we would affirm the sentencing court's decision to sentence Hyatt to life imprisonment without the possibility of parole. We therefore declare a conflict with Skinner pursuant to MCR 7.215(J)(2)." Id.

Six days after the decision in the present case, the United States Supreme Court held that its previous ruling in Miller v. Alabama, 567 US 460 (2012), that a mandatory life sentence without parole should not apply to juveniles convicted of murder, should be applied retroactively. Montgomery v Louisiana, ___ US ___; 136 S Ct 718; 193 L Ed 599 (2016).

Two days later, the prosecution filed an application for leave to appeal to the Michigan Supreme Court. ("Plaintiff-Appellant's Application For Leave To Appeal," 1/27/16.) Within its application, the prosecution raises two issues: First, the statute at issue in the present case for juvenile sentences of life without parole offenses, MCL 769.25, is consistent with the Sixth Amendment and is consistent with Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012). (Id.) Secondly, the prosecution argues that Skinner was wrongly decided and should be overruled. (Id.)

On February 12, 2016, a Court of Appeals' conflict panel was ordered, and after briefing and oral argument, issued its decision on July 21, 2016. The Court of Appeals ruled it would not follow Skinner by determining that a judge, not a jury, is to detcide whether a juvenile should receive life without parole. People v Hyatt, ___ Mich App ___ (2016). The Court, however, remanded the case to the trial court for resentencing. The Court stated: "On resentencing, the court is to implement the directives of Miller and

Montgomery and be mindful that those cases caution against the imposition of a life-without-parole sentence except in the rarest of circumstances." Id.

Both Plaintiff and Hyatt have appealed to this Court. Hyatt's application remains pending, while this Court has ordered the parties to file supplemental briefs "addressing whether the conflict-resolution panel of the Court of Appeals erred by applying a heightened standard of review for sentences imposed under MCL 769.25." (Michigan Supreme Court "Order," docket number 153081, 1/24/17.)

ARGUMENT

I. THE CONFLICT PANEL DID NOT ERR BY APPLYING A HEIGHTENED LEVEL OF SCRUTINY WHEN REVIEWING A JUVENILE SENTENCE IMPOSED UNDER MCL 769.25 WHEN A JUVENILE OFFENDER IS CATEGORICALLY DIFFERENT THAN AN ADULT OFFENDER AND A LIFE WITHOUT PAROLE SENTENCE CAN ONLY BE IMPOSED UPON A "RARE JUVENILE OFFENDER WHOSE CRIME REFLECTS IRREPARABLE CORRUPTION"

The United States Supreme Court case of Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) is part of a long list of cases recognizing that in our civilized society we must treat juvenile offenders differently when meted out punishment for even the most heinous crimes. This recognition has science backing it up and leaves no doubt that in the overwhelmingly majority of juvenile first-degree murder cases, a sentence of life without parole is inappropriate and unconstitutional under the Eighth Amendment. Id., 132 S Ct at 2464. The Miller Court, following a long line of precedent, concluded that mandatory life without parole sentences for juvenile offenders is "cruel and unusual punishment." Id., 132 S Ct at 2463-75.

The Miller Court articulated a substantive rule of law. Montgomery v Louisiana, ___ US ___; 136 S Ct 718, 729; 193 L Ed 2d 599 (2016). This substantive rule of law paved the way for the Court in Montgomery to rule, once again citing a growing list of scientific backing, that juvenile life without parole sentences can be attacked retroactively. Id.

To emphasis the point that life without parole sentences for a juvenile would be inappropriate for all but the rare juvenile offender, an extended quote from Montgomery makes the point crystal clear:

> The "foundation stone" for Miller's analysis was this Court's line of precedent holding **certain punishments disproportionate when applied to juveniles**. 567 U.S., at ——, n. 4, 132 S.Ct., at 2464, n. 4. Those cases include . Graham v Florida, [560 U.S. 48, 69, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)] which held that the Eighth Amendment bars life without parole for juvenile nonhomicide offenders, and Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 [(2005)], which held that the Eighth Amendment prohibits capital punishment for those under the age of 18 at the time of their crimes. Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence. See Graham, supra, at 59, 130 S.Ct. 2011 ("The concept of proportionality is central to the Eighth Amendment"); see also Weems v. United States, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910); Harmelin v. Michigan, 501 U.S. 957, 997–998, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (KENNEDY, J., concurring in part and concurring in judgment).
>
> Miller took as its starting premise the principle established in Roper and Graham that "**children are constitutionally different from adults for purposes of sentencing**." 567 U.S., at ——, 132 S.Ct., at 2464 (citing Roper, supra, at 569–570, 125 S.Ct. 1183; and Graham, supra, at 68, 130 S.Ct. 2011). These differences result from children's "diminished culpability and greater prospects for reform," and are apparent in three primary ways:
>
> > "First, children have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking. Second, children 'are more vulnerable to negative influences and outside pressures,' including from their family and peers; they have limited 'control over their own environment' and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as 'well formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretrievable depravity.'" 567 U.S., at ——, 132 S.Ct., at 2464 (quoting Roper, supra, at 569–

570, 125 S.Ct. 1183; alterations, citations, and some internal quotation marks omitted).

As a corollary to a child's lesser culpability, Miller recognized that "the distinctive attributes of youth diminish the penological justifications" for imposing life without parole on juvenile offenders. 567 U.S., at ——, 132 S.Ct., at 2465. Because retribution "relates to an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult." Ibid. (quoting Graham, supra, at 71, 130 S.Ct. 2011; internal quotation marks omitted). The deterrence rationale likewise does not suffice, since "the same characteristics that render juveniles less culpable than adults—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." 567 U.S., at —— – ——, 132 S.Ct., at 2465 (internal quotation marks omitted). The need for incapacitation is lessened, too, because ordinary adolescent development diminishes the likelihood that a juvenile offender "'forever will be a danger to society.'" Id., at ——, 132 S.Ct., at 2465 (quoting Graham, 560 U.S., at 72, 130 S.Ct. 2011).

Rehabilitation is not a satisfactory rationale, either. Rehabilitation cannot justify the sentence, as life without parole "forswears altogether the rehabilitative ideal." 567 U.S., at ——, 132 S.Ct., at 2465 (quoting Graham, supra, at 74, 130 S.Ct. 2011).

These considerations underlay the Court's holding in Miller that mandatory life-without-parole sentences for children "pos[e] too great a risk of disproportionate punishment." 567 U.S., at ——, 132 S.Ct., at 2469. Miller requires that before sentencing a juvenile to life without parole, the sentencing judge take into account "how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Ibid. The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of "children's diminished culpability and heightened capacity for change," Miller made clear that "appropriate occasion for sentencing juveniles to this harshest possible penalty will be uncommon." Ibid.

Miller, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of "the distinctive attributes of youth." Id., at ——, 132 S.Ct., at 2465.

Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth

> Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" Id., at ——, 132 S.Ct., at 2469 (quoting Roper, 543 U.S., at 573, 125 S.Ct. 1183). Because Miller determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,' " 567 U.S., at ——, 132 S.Ct., at 2469 (quoting Roper, supra, at 573, 125 S.Ct. 1183), it rendered **life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth**. Penry, 492 U.S., at 330, 109 S.Ct. 2934. As a result, Miller announced a substantive rule of constitutional law. Like other substantive rules, Miller is retroactive because it "'necessarily carr[ies] a significant risk that a defendant' "—here, **the vast majority of juvenile offenders**—"'faces a punishment that the law cannot impose upon him.'"

Montgomery v. Louisiana, ___ US ___; 136 S. Ct. 718, 732–34; 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016) (Emphasis added.)

The Montgomery case, decided last year, is a beacon of light the states need to follow. Not only does Montgomery mandate that Miller shall apply retroactively, it provides a refresher on how juvenile offenders are different. This brings us to the Court of Appeals' panel decision in the present case and its understanding of United States Supreme Court precedent.

Normally, such an extended quote would be avoided, but the Montgomery remarks hit the point square on and provides the precedent needed for Hyatt's rationale of a heightened level of review. Despite the mandates of Miller and Montgomery that it is only "the rare juvenile offender whose crime reflects irreparable corruption" that should get a sentence of life without parole, county prosecutors do not see it that way. (Detroit Free Press,

"Michigan prosecutors defy U.S. Supreme Court on 'juvenile lifers," 8/29/16.) The following is a snippet that emphasizes the point that county prosecutors are unwilling or reluctant to take an individualized look at juvenile lifers and are pushing to uphold the sentences of life without parole:

Saginaw County:	21 of 21
Macomb County:	10 of 10
Kalamazoo County:	9 of 9
Oakland County:	44 of 49
Genesee County:	23 of 27
Wayne County:	61 of 153

Id.

The above statistics flip Miller on its head with prosecutors advocating that it is only the rare juvenile lifer that should **not** receive a sentence of life without parole. It is hardly rare when the above prosecutors are advocating for 168 of 269 (62%) juvenile lifers to remain in prison until death. Take Wayne County out of this equation and we have 107 of 116 or 92%. With these figures in mind, take it with a grain of salt when the advocate on the other side suggests we do not need a heightened level of review.

The conflict panel states the standard of review is "a common three-fold standard, the likes of which are applied in a variety of contexts. Any factfinding by the trial court is to be reviewed for clear error, any questions of law are to be reviewed de novo, and the court's ultimate determination as to the sentence

imposed is for an abuse of discretion. See People v. Hardy, 494 Mich. 430, 438; 835 NW2d 340 (2013)." The panel reasons:

> Because of the unique nature of the punishment of a life-without-parole sentence for juveniles and the mitigating qualities of youth, we are obligated to clarify what the abuse-of-discretion standard should look like in the context of life-without-parole sentences for juveniles. As will be discussed in more detail below, we hold that **the imposition of a juvenile life-without-parole sentence requires a heightened degree of scrutiny regarding whether a life-without-parole sentence is proportionate to a particular juvenile offender, and even under this deferential standard, an appellate court should view such a sentence as inherently suspect**.
>
> In order to provide **meaningful appellate review under abuse-of-discretion standard for juvenile life-without-parole sentences**, a reviewing court must remain mindful that life without parole is the maximum punishment that may be imposed for a juvenile offender under MCL 769.25. That this is the harshest penalty available under the law raises the stakes not just for the defendant, but also for appellate review of the trial court's sentencing decision. Hence, appellate review of a juvenile life-without-parole sentence **cannot be a mere rubber-stamping of the penalty handed out by the sentencing court**. In Milbourn, our Supreme Court repeatedly warned that **the maximum penalty available under the law is to be imposed for only the most serious offenders and the most serious offenses or it would risk failing the proportionality test**. Milbourn, 435 Mich. at 645–646. To impose the maximum possible penalty "in the face of compelling mitigating circumstances would run against this principle [of proportionality] and against the legislative scheme." Id. at 653. Thus, in terms of appellate review, a **reviewing court is justifiably skeptical of a sentence which represents the maximum available punishment, because such punishment is only available in limited, i.e., the most serious and extreme, circumstances**. See id. at 654. In order to impose the maximum possible penalty, the case must "present a combination of circumstances placing the offender in [ ] the most serious ... class with respect to the particular crime...." Id. at 654. Accordingly, sentencing courts should guard against a routine imposition of the most severe penalty authorized by statute. Id. at 645. Moreover, we pay heed to Milbourn's cautionary sentiment that the

> unjust imposition of a maximum sentence has the potential to shake "[t]he public's faith in the just and fair administration of justice...." Id.

Hyatt, slip op 25-26.

In essence, we cannot apply the Milbourn deferential "abuse of discretion" standard to juveniles since the stakes are so high. For adults, there is no discretion for sentencing judges on first-degree murder cases. Review needs to be heightened because children are different than their adult counterparts as Miller and Montgomery clearly state. Further, as shown above, we cannot trust elected prosecutor's to advocate life without parole for only the rare juvenile offender since their view is at-odds with United States Supreme Court precedent. (Detroit Free Press, "Michigan prosecutors defy U.S. Supreme Court on 'juvenile lifers,'" 8/29/16.)

The prosecution wrongly states that the "standard of review for sentences under MCL 769.25 is the well-accepted abuse-of-discretion standard." This statute, however, states no standard of review within its provisions. This can call for de novo review. People v. Russell, 471 Mich. 182, 187; 684 N.W.2d 745 (2004). Further, in citing People v Babcock, 469 Mcih 247; 666 NW 2d 231 (2003), the prosecution quotes: "At its core, and abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." ("Plaintiff-Appellant's Amended

Application For Leave To Appeal," p 30, 8/30/16.) This quote is precisely why heightened scrutiny is needed—there needs to be a single correct outcome since the result is irreparable for a juvenile. We should expect more when determining whether or not a juvenile will leave the prison walls in casket.

Other states have pointed out the impact that Miller and Montgomery has on a trial court's discretion. For example, in the Georgia case of Veal v State, 298 Ga. 691; 2016 Ga. LEXIS 243 (2016), that court remarked:

> The Montgomery majority's characterization of Miller also undermines this Court's cases indicating that trial courts have significant discretion in deciding whether juvenile murderers should serve life sentences with or without the possibility of parole. Miller noted that, "given all we have said in Roper, Graham, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." Miller, 132 SCt at 2469.

Even lengthy term-of-years sentences are provided more scrutiny by other courts in following the dictates of Miller. In Iowa, for example, the court remanded for resentencing, stating:

> We conclude that Miller's principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under Miller.
>
> . . . .
>
> Having determined the rationale of Miller applies to this case, we now consider what the district court is required to do in deciding whether a juvenile defendant should be sentenced to a half century in prison. The Supreme Court has directed that **a trial court must undertake an analysis of "[e]verything [it] said in Roper and**

> Graham" about youth. Miller, 567 U.S. at , 132 S. Ct. at 2467, 183 L. Ed. 2d at 422.
>
> We think the direction from the Supreme Court that trial courts consider everything said about youth in Roper, Graham, and Miller means more than a generalized notion of taking age into consideration as a factor in sentencing.

Iowa v Null, 836 NW2d 41; 2013 Iowa Sup. LEXIS 94 (2013.)

A review of the facts of the present case show the trial court disregarding expert opinion and considering Hyatt on par with adult offenders with the sentence of life without parole. The psychologist who interviewed Hyatt found him to be very cooperative, very pleasant, has the capacity to be rehabilitated, and "there's no indication that he is unable to learn from his environment and unable to learn from the error of his ways." (Transcript, "Miller Hearing," pp 29 and 47, 11/21/14.) Despite the indications of reform, the trial court maintained its sentence of life without parole. The trial court, references Miller, but goes on to state:

> I have no information from any source that would cause this Court to believe that had Mr. Hyatt been an adult he would have--I'm sorry, been eighteen that somehow the outcome would have been any different. I don't think any factor that I've considered has anything to do with his age. He and his friends or relatives had a particular target, John Mick's gun. They had a plan to rob him to get the gun and they carried it out. Unfortunately, and very unfortunately, Mr. Mick lost his life.
>
> I don't think it was an act of impetuosity or recklessness. And I know read someplace that Mr. Hyatt says he was high on drugs at the time of the offense but certainly that does not come across in any of the either the videos or any of the interviews that were conducted with him.
>
> . . . .

> A very important concern under Miller versus Alabama as I've said the potential for rehabilitation and reformation of the offender, Doctor Clark thought within five years he would not be able to be reformed. She was very concerned looking out decades perhaps as many as forty years. She could not say that he would be reformed or have a potential for rehabilitation. She said he is not a sensitive compassionate young man. And really no way of predicting whether he is going to be able to change his course. She said that to change would require quote in quote extreme effort and dedication on his part, end quote. Quote, it depends on him, end quote. As I've said five years out, prognosis in her view is very, very bleak, end quote. She cannot say where looking out as far as forty years but would require extreme effort on his part. She did feel that much of his behavior was given by drugs. And noted, of course, that we don't think he'll be likely to be able to receive drugs and have them on a regular basis in the prison setting, at least we hope not.
>
> So the Court has extensively considered this defendant's background as presented to the Court in terms of records, presentence report, testimony, and the factors set forth in the Miller versus Alabama. In considering all of that and the nature of the crime itself and the defendant's level of participation as the actual shooter in this case, the principle of proportionality requires this Court to sentence him to life in the State prison without parole.

(Id., pp 5-12.)

Even though the trial court references Miller, it never finds Hyatt a person of "irreparable corruption" and goes overboard in an attempt to justify a life without parole sentence. Keep in mind, such a finding would have been upheld had it not been for Skinner. See, People v. Perkins, 314 Mich. App. 140; 885 N.W.2d 900 (2016). A deferential standard when the stakes are so high needs to be avoided as both Miller and Montgomery caution against a life without parole sentence, explicitly state such a sentence should be "rare," and mandate a finding of "irreparable corruption."

CONCLUSION

Defendant-Appellee Kenya Ali Hyatt respectfully requests that this Honorable Court find a heightened level of scrutiny is appropriate when reviewing a sentence of life without parole for a juvenile.

Respectfully submitted,

Dated: March 6, 2017

Ronald D. Ambrose (P45504)
Attorney for Defendant-Appellee
16818 Farmington Road
Livonia, MI 48154-2974
(c) (248) 890-1361

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v.

KENYA ALI HYATT,

Defendant-Appellee.

Case No. 13-032654-FC
CofA#: 325741
SCt#s: 153081

Karen R. Hanson (P53588)
Attorney for Plaintiff-Appellant
900 S. Saginaw Street
Flint, MI 48502
(810) 257-3232

Ronald D. Ambrose (P45504)
Attorney for Defendant-Appellee
16818 Farmington Road
Livonia, MI 48154-2974
(c) (248) 890-1361

PROOF OF SERVICE

I, Ronald D. Ambrose, attorney for Defendant-Appellee Kenya Ali Hyatt, certify that March 6, 2017 I served through first class mail, postage fully prepaid, a copy of the following documents upon counsel for Plaintiff-Appellant, Joseph F. Sawka, addressed to Genesee County Prosecutor's Office, 900 S. Saginaw Street, Flint, MI 48502: 1) Defendant-Appellee's Supplemental Brief.

Dated: March 6, 2017

Ronald D. Ambrose (P45504)
Attorney for Defendant-Appellee
16818 Farmington Road
Livonia, MI 48154-2974
(c) (248) 890-1361